

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the matter of)

Microwave Relocation Rules;)
Comment Request for Blocks)
C Through F)

WT Docket No. 95-157
RM-8643

To: The Commission

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COMMENTS OF THE
AMERICAN PUBLIC POWER ASSOCIATION

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**COMMENTS OF THE
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Pursuant to the *Further Notice of Proposed Rule Making*, FCC 96-196, released April 30, 1996 in the above-captioned proceeding, the American Public Power Association (APPA) hereby respectfully submits its comments on proposed changes to the Commission's microwave relocation rules.

I. Introduction

APPA is the national service organization representing the interests of over 2,000 consumer-owned electric utility systems located in every state except Hawaii. Approximately 50 APPA members operate fixed microwave systems in the 1.85-1.99, 2.13-2.15, and 2.18-2.20 GHz (2 GHz) bands. These facilities range in size and complexity from simple, one-path analog systems to multichannel digital systems spanning more than 900 total miles.

APPA members use these facilities for real-time control, monitoring, and dispatch of electric generation and transmission facilities, as well as long- and medium-haul remote data and voice communications. Typical usage would include: (1) remotely detecting, isolating and clearing fault conditions on high-power transmission lines within milliseconds, thereby preventing blackouts and loss of lives and property; (2) bringing nuclear, thermal and hydroelectric generation stations on- and off-line to instantaneously match system capacity with demand; (3) forwarding critical telemetry data between and among a utility's substations, operations control centers, generation stations and other utilities; and (4) controlling mobile

radio base stations and other radio systems used for load control, environmental monitoring and nuclear plant operations.

Because these member systems depend upon reliable and secure communications facilities in carrying out their public service obligations, APPA has been an active participant in this proceeding and other activities dealing with the use of the 2 GHz band for fixed microwave.

II. The Commission Should Reject Proposals to Alter the Voluntary and Mandatory Negotiation Periods for the C, D, E and F Blocks

In their filings with the Commission in the above-captioned proceeding, advocates for the Personal Communications Services (PCS) industry have advanced exaggerated claims of “bad faith” in the microwave relocation process, arguing that numerous bad actors are impeding the relocation process and effectively devaluing the spectrum. To date, limited evidence has been offered to substantiate these allegations, and many of these claims have been strongly disputed or retracted. Nonetheless, PCS advocates have persisted in using inflated rhetoric to make sweeping accusations against the entire 2 GHz incumbent community as justification for the elimination or shortening of the voluntary negotiation period.

By urging the Commission to retroactively modify its existing rules for 2 GHz microwave relocation,¹ PCS advocates have engaged in a transparent attempt to gain a competitive advantage in ongoing market-based negotiations. The Commission rightfully rejected these arguments in its *First Report and Order and Further Notice of Proposed Rulemaking* (“*WT First Report and Order*”),² noting that “the existing relocation procedures for microwave incumbents adopted in the *Emerging Technologies* docket were the product of extensive comment and deliberation prior to the initial licensing of PCS.”³ The Commission emphasized that “the general approach to relocation in our existing rules is sound and equitable.”⁴

¹ As set forth in the *Third Report and Order*, ET Docket No. 92-9, 58 FR 46547 (September 2, 1993), as modified on reconsideration by the *Memorandum Opinion and Order*, 59 FR 19642 (April 25, 1994).

² WT Docket No. 95-157, FCC 96-196 (April 30, 1996).

³ *Id.*, par. 10.

⁴ *Id.*

Interestingly, similar arguments were advanced last year during Congressional consideration of budgetary legislation, but PCS advocates were ultimately unsuccessful in making a persuasive case for a retroactive legislative modification of the Commission's relocation rules. One proposal by the Cellular Telephone Industry Association (CTIA) would have shortened the voluntary negotiation period from two years to one year and established a date certain for the start of the mandatory negotiation period.

APPA supports these conclusions of the Commission and the Congress. We believe that similar logic should apply in reviewing proposals to eliminate, shorten or otherwise alter the basic structure of the voluntary and mandatory negotiation periods.

In rejecting proposals to alter the voluntary negotiation period for the A and B blocks, the Commission rightly noted that PCS licensees in these blocks "were on notice of the voluntary period when they bid for their licenses, and they presumably have factored the length of the period and the potential cost of relocation into their bids."⁵ Although the voluntary negotiation period for the C block has not yet begun, bidding has been based on the Commission's current rules, and no substantive distinction should be made between the A, B and C blocks in that regard.

Likewise, PCS industry advocates have demonstrated no compelling reason to rewrite the negotiation rules for the D, E and F blocks, and the burden of proof in this instance clearly rests with the proponents. Arguments that such action is necessary to ensure the rapid deployment of PCS fail to acknowledge that the Commission's regulatory structure has been largely successful in facilitating relocation through market-based negotiations. The deployment of PCS in the Washington, D.C. and Baltimore, Maryland region is but one case in point.

On the contrary, proposals to shorten the voluntary negotiation period would simply hand prospective PCS licensees in the D, E and F blocks an additional competitive advantage over 2 GHz incumbents, as well as PCS licensees in the A, B and C blocks. While APPA does not

⁵ Id., par. 13.

represent the interests of the PCS industry, presumably PCS licensees in the D, E and F blocks are no more “deserving” of such an advantage than their A, B and C block counterparts.

Of greater concern, however, is the impact of this proposal on incumbent 2 GHz users. By requiring incumbents to commence mandatory negotiations after only one year, this proposal would significantly increase the burden on APPA’s not-for-profit, consumer-owned electric utilities. A one-year time limit prior to commencement of mandatory negotiations would provide insufficient time for many public power systems to muster the resources necessary to respond to a PCS licensee’s requests. At the same time, inability to respond in a timely manner could subject the public power system to allegations of bad faith and potential penalties by the Commission.

This proposal would have a particularly severe impact on the limited budgets of smaller public utility systems, such as Chillicothe Municipal Utilities in Chillicothe, Missouri, which serves approximately 4,600 customers, and Thomasville Water & Light Department in Thomasville, Georgia, which serves about 15,500 customers. On the whole, APPA’s not-for-profit member systems already face significant disadvantages in market-based negotiations with PCS licensees, many of whom represent America’s largest telecommunications companies. The Commission should reject outright any proposal that would further exacerbate this situation.

Finally, any change in the basic structure or length of the negotiation periods would be inconsistent with the Commission’s stated objectives for 2 GHz microwave relocation. The Commission’s *First Report and Order* and *Third Notice of Proposed Rule Making* (“*ET First Report and Order*”),⁶ established a regulatory process that is designed to encourage voluntary negotiations between current 2 GHz microwave incumbents and emerging technology licensees. Since issuance of the *ET First Report and Order*, the Commission has repeatedly encouraged parties to use expedited alternative dispute resolution procedures, such as binding arbitration and mediation, to resolve disagreements that arise during negotiations.

⁶ ET Docket No. 92-9, 57 FR 49020 (October 29, 1992).

III. The Commission Should Facilitate System-Wide Relocations by Allowing Microwave Incumbents to Participate in the Cost Sharing Plan

In the current proceeding, APPA has reviewed the Comments of UTC, the Telecommunications Association, and agrees with the principles set forth therein. We urge the Commission to give them prompt and favorable consideration.

In particular, APPA shares UTC's support for the Commission's conclusion that "microwave incumbents that relocate themselves should be allowed to obtain reimbursement rights and collect reimbursement under the cost-sharing plan from later entrant PCS licensees that would have interfered with the relocated link." APPA notes that as not-for-profit, consumer-owned electric utilities -- subject to local oversight, competitive bidding requirements and public records laws -- public power systems have an inherent incentive to minimize the expenses involved in relocating their 2 GHz microwave networks.

IV. Conclusion

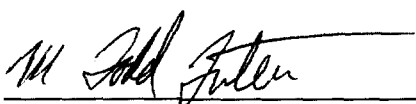
PCS industry advocates have been active participants throughout the Commission's rulemaking process. APPA believes that it is fundamentally unjust for these parties to now seek retroactive modification of the Commission's relocation rules through proposals to shorten or eliminate the voluntary negotiation period. Such a change would simply serve to give PCS licensees an additional competitive advantage in market-based negotiations, while imposing economic hardship on many not-for-profit, consumer-owned electric utilities. For these reasons, APPA urges the Commission to reject proposals to modify the negotiation periods for the C, D, E and F blocks.

APPA also urges the Commission to facilitate system-wide relocations by allowing microwave incumbents to participate in the PCS cost-sharing plan under the terms and conditions outlined in the comments filed in the above-captioned proceeding by UTC, the Telecommunications Association.

WHEREFORE, THE PREMISES CONSIDERED, the American Public Power Association respectfully requests the Commission to take actions consistent with the views expressed herein.

Respectfully submitted,

AMERICAN PUBLIC POWER ASSOCIATION

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May 28, 1996

CERTIFICATE OF SERVICE

I, Karen Walls, on behalf of the American Public Power Association (APPA), hereby certify that I have caused to be sent, by first-class U.S. mail, on this 28th day of May 1996, a copy of the foregoing to each of the following individuals:

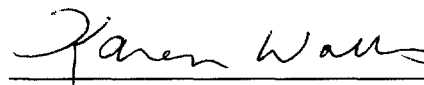
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The Honorable James H. Quello
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